

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

06-cr-121-bbc

STUART G. KURSCHNER,

Defendant.

A hearing on the probation office's petition for judicial review of Stuart G. Kurschner's supervised release was held on September 17, 2010, before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Paul W. Connell. Defendant was present in person and by counsel, Mark Maciolek. Also present was United States Probation Officer Traci L. Jacobs.

From the record and the parties' stipulation, I make the following findings of fact.

FACTS

Defendant was sentenced in the Western District of Wisconsin on October 31, 2006, following his conviction for interstate transportation of stolen property, in violation of 18 U.S.C. § 2314. This offense is a Class C felony. Defendant was committed to the custody of the Bureau of Prisons to serve a term of imprisonment of 18 months, with a 36-month term of supervised release to follow.

Defendant began his term of supervised release on March 13, 2008.

From April 2008 through February 2009, in June and December 2009, in January 2010, and from May through July 2010, defendant violated the special condition of supervision requiring him to pay restitution when he failed to make restitution payments as required.

Defendant violated Standard Condition No. 3, requiring him to answer truthfully all inquiries by the probation officer, when he falsely reported paying \$430 in rent for the months of March through June 2010.

Defendant violated Special Condition No. 4, prohibiting him from incurring new lines of credit without approval of the probation officer, when he opened Chase, Citi, and Discover credit accounts and extended his credit debt on his Capital One credit account without authorization. Defendant violated Standard Condition No. 3, requiring him to follow the instructions of the probation officer when he failed to close his Discover account as directed by his supervising U.S. probation officer.

In July 2010, defendant violated Standard Condition No. 6, requiring him to give his probation officer notice of a change in residence at least ten days before the move, when he failed to make a timely report of his change in residence. Defendant violated Standard Condition No. 3, requiring him to be truthful with his supervising U.S. probation officer, when he falsely reported the date on which he changed residences.

Defendant has refused to work, in violation of Special Condition No. 5, requiring him to work regularly at a lawful occupation, unless excused by his probation officer.

Defendant's conduct falls into the category of Grade C violations. Section 7B1.3(a)(2) of the advisory guidelines provides that the court may revoke supervised release, extend the term of supervised release or modify the conditions of supervision upon a finding of a Grade C violation.

CONCLUSIONS

Defendant's violations warrant revocation. His criminal history category is I. With a Grade C violation, defendant has an advisory guideline range of imprisonment of 3 to 9 months. The statutory maximum to which he can be sentenced upon revocation is 24 months, under 18 U.S.C. § 3583(e)(3), which provides that a defendant whose term of supervised release is revoked may not be required to serve more than two years if the offense for which the defendant was sentenced previously was a Class C felony.

After reviewing the non-binding policy statements of Chapter 7 of the Sentencing Guidelines, I have selected a sentence at the bottom of the advisory guideline range. The intent of this sentence is to hold defendant accountable for his behavior, protect the community, address defendant's supervision needs and allow defendant to make payments toward his restitution obligation.

ORDER

IT IS ORDERED that the period of supervised release imposed on defendant Stuart G. Kurschner on October 31, 2006, is REVOKED and defendant is committed to the custody of the Bureau of Prisons for a term of three months with 18 months' supervised

release to follow. All standard and special conditions of supervised release previously imposed shall remain in effect with the addition of the following special conditions:

- (6) Spend the first 90 days of his supervision in a residential reentry center. Defendant may be absent from the center for employment purposes, for mental health counseling and treatment and for passes consistent with program rules. Defendant is to pay his own medical expenses. Defendant may be discharged early from the facility upon the approval of both the facility administrator and the supervising U.S. probation officer.
- (7) If not employed at a regular lawful occupation, participate in training, counseling, daily job search or other activities relating to finding or preparing for employment, all as directed by the probation officer;
- (8) Undergo at least one financial evaluation a year, which may involve use of a polygraph, as approved by the supervising U.S. probation officer.
- (9) Not transfer, give away, sell or otherwise convey any asset without the prior approval of the supervising U.S. probation officer; and
- (10) Not make purchases greater than \$250 without authorization from the supervising U.S. probation officer.

Defendant does not have the financial means or earning capacity to pay the cost of his incarceration. Defendant is to be registered with local law enforcement agencies and the state attorney general before his release from confinement.

Defendant is neither a flight risk nor a danger to the community. Accordingly, the term of imprisonment is stayed until October 28, 2010, when defendant is to report between

the hours of 10:00 a.m. and noon at an institution to be designated by further court order.

Entered this 20th day of September 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge